

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JUDGE DAVID M. GLOVER

DIVISION I

CACR05-1200

December 6, 2006

ROGER KEITH HAIRSTON  
APPELLANT  
V.  
STATE OF ARKANSAS  
APPELLEE

APPEAL FROM THE MILLER  
COUNTY CIRCUIT COURT  
[CR03-199-2, CR04-265-2]

HONORABLE JAMES S. HUDSON, JR.,  
JUDGE

AFFIRMED

Appellant Roger Keith Hairston pleaded guilty to possession of methamphetamine and was sentenced to ten years' probation. Additionally, appellant entered conditional pleas of guilty to the charges of criminal attempt to manufacture methamphetamine, possession of drug paraphernalia with intent to use it in the manufacture of methamphetamine, and possession of marijuana with intent to deliver, all upon the trial court's denial of his motion to suppress evidence found during a search of his residence. Appellant's sole point on appeal is that the trial court erred in denying his motion to suppress for the reason "the affidavit for the search warrant for the search of [his] home did not provide a basis for a finding of probable cause because it provided no time frame

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of or facts from which to infer when contraband or evidence of crime would be found there.” We affirm the trial court’s denial of appellant’s motion to suppress.

In *Berta v. State*, 84 Ark. App. 335, 339, 140 S.W.3d 487, 490 (2004) (citations omitted), this court held:

In reviewing the trial court's denial of a motion to suppress evidence, we conduct a de novo review based on the totality of the circumstances, reviewing findings of historical facts for clear error and determining whether those facts give rise to reasonable suspicion or probable cause, giving due weight to inferences drawn by the trial court. An affidavit for a search warrant must set forth facts and circumstances establishing probable cause to believe that things subject to seizure will be found in the place to be searched. Because a magistrate must know that at the time of the issuance of the warrant there is criminal activity or contraband where the search is to be conducted, a time reference must be included in the affidavit, and the time that is critical is the time during which the criminal activity or contraband was observed. However, the absence of a reference to time in the affidavit will not render the warrant defective if we can look to the four corners of the affidavit and infer the time during which the observations were made.

In the present case, the affidavit for search warrant, signed by Miller County Sheriff’s Office narcotics investigator Tony Potts, stated:

The undersigned being duly sworn deposes and says:

That he has reason to believe that A W/M NAMED ROGER KEITH HAIRSTON has on his/her person or premises, and all buildings, structures, or vehicles situated thereon, the said premises being located at **RT. 1 BOX 4120 TEXARKANA, AR. STARTING AT LOOP 245 AND U.S. HWY 71 SOUTH. GO 1.3 MILES SOUTH ON U.S. HWY 71 TO STATE HWY 237. TURN RIGHT ON HWY 237 AND GO TO COUNTY ROAD #10 AND TURN LEFT ONTO COUNTY ROAD #10. GO ABOUT 1/4 MILE TO A DRIVE WAY ON THE LEFT. TURN LEFT ON THE DRIVEWAY. THERE IS A BROWN FRAME, THE FRONT DOOR FACES SOUTH. In the County of Miller, State of Arkansas, there is now being concealed and conducted, or possessed name**

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**METHAMPHETAMINE AND THE ITEMS TO MANUFACTURE METHAMPHETAMINE, STOLEN PROPERTY** and any other articles thereof, including, but not limited to books, currency, records, electronic devices, and articles of identification. **Which are being possessed in violation of Arkansas Statute 5-64-401 as amended, and that the facts tending to establish the foregoing grounds for the issuance of a search warrant are as follows:** WE HAVE BEEN RECEIVING INFORMATION THAT THE ABOVE SUBJECT HAS BEEN COOKING METHAMPHETAMINE AT HIS RESIDENCE. THE SUBJECT IS A DOCTOR AT WADLEY HOSPITAL AND THAT HE ONLY SELLS TO A SELECT FEW. WE HAVE CONDUCTED SURVEILLANCE ON HIS RESIDENCE FOR ABOUT SIX MONTHS TRYING TO GET ENOUGH INFORMATION TO EXECUTED [sic] A SEARCH WARRANT. WE HAVE RECEIVED INFORMATION FROM SEVERAL DIFFERENT C.I.S ON 01-20-03, I WAS CALLED BY CID STATING THAT THE ABOVE SUBJECT HAD BEEN OUT AND THAT NIGHT PATROL WAS LOOKING FOR HIM. HE WAS FOUND OUT ON THE FARM NEXT TO TYSON ROAD OFF HWY 67. BECAUSE EMPLOYEES OF TYSON CALLED THE SHERIFF'S OFFICE STATING THAT THE SUBJECT WAS ACTING REAL WEIRD DURING THE NIGHT THIS IS THE REASON THAT CID AND CAPT. GILES AND PATROL WAS OUT LOOKING FOR HIM THIS MORNING FOR HIS WELL BEING. THE SUBJECT WAS LOCATED BY PATROL AND CID CAPT. GILES. THE SUBJECT WAS ON ONE OF THE BACK ROADS. HE HAD HIS TRUCK THERE. HE HAD TWO LOADED RIFLES AND A LARGE AMOUNT OF AMMO FOR DIFFERENT RIFLES. THEY ALSO SEEN A SMOKING PIPE LYING ON THE CONSOLE OF THE VEHICLE. THEY LOOK [sic] AT THE CONSOLE AND FOUND TWO CLEAR PLASTIC BOTTLES WITH A WHITE POWDER IN THEM. THEY PLACED THE SUBJECT UNDER ARREST FOR POSSESSION OF A CONTROLLED SUBSTANCE AND POSSESSION OF DRUG PARAPHERNALIA. INVESTIGATOR JORDAN READ HIM HIS RIGHTS. THE SUBJECT TOLD THEM THAT HE HAD BEEN COOKING METHAMPHETAMINE. HE STATED THAT HE TRIED TO GET A DOCTOR TO WRITE HIS [sic] A PRESCRIPTION FOR METHAMPHETAMINE. HE STATED THAT THEY WOULD NOT, SO HE STARTED TO MAKE HIS OWN METH AT HIS RESIDENCE TO TRY AND CURE HIS CLUSTER HEADACHES.

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Based upon this affidavit, a search warrant was issued for appellant's residence, and the evidence found at the residence formed the basis for the charges to which appellant entered conditional guilty pleas. At the hearing, Investigator Potts indicated that the six-month time period stated in his affidavit was a mistake. He said that his unit had been conducting surveillance on appellant for between one and a half and three months.

Although there is no specific time reference in the affidavit, this omission will not render the search warrant defective if the time during which the observations were made can be inferred from the four corners of the affidavit. *Berta, supra*. Here, the affidavit stated that there had been ongoing surveillance of appellant; that on January 20, 2003, officers were performing a welfare check due to a call from Tyson employees on the preceding night about appellant acting strangely; that the officers found appellant on a back road with guns and ammunition; and that appellant was arrested after officers saw drug paraphernalia (a smoking device) and two vials of white powder in plain view in appellant's truck. After appellant had been arrested and was read his rights, he stated to the officers that he suffered from cluster headaches and could not get a doctor to write a prescription for methamphetamine, so he began manufacturing methamphetamine at his residence. Although the fact that appellant possessed drug paraphernalia and methamphetamine would not necessarily mean that he is manufacturing the drug, those facts, when coupled with appellant's statements that he suffered from cluster headaches

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and began to make methamphetamine when he could not get a doctor to prescribe it for him, indicate that the manufacture was presently occurring. We hold that in this case a time frame can be reasonably inferred, and we affirm the denial of appellant's motion to suppress.

Affirmed.

VAUGHT and CRABTREE, JJ., agree.